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# INDETERMINATE SENTENCE, RELEASE ON PAROLE AND PARDON

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## REPORT OF COMMITTEE "F" OF THE INSTITUTE<sup>1</sup>

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EDWARD LINDSEY, CHAIRMAN.

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With a comparatively brief period of its labors since the last meeting of the Institute the Committee at this time aims simply to present a review of the changes in legislation relating to indeterminate sentence and release on parole and the extension of one or both of these systems in states not heretofore having adopted them.

The Committee suffered grievous loss in the deaths last winter of two of its members: Prof. Charles R. Henderson, of Chicago, and Rev. Samuel G. Smith, of St. Paul; both intensely interested in the subjects comprising the Committee's field of work and both engaged in investigations with respect to the results of indeterminate sentence and parole in actual operation which, could they have been pursued would have furnished valuable material for the Committee's report.

There are still a considerable number of states which have not adopted the so-called indeterminate sentence. In some, as in Alabama, it is under consideration with some prospect of adoption. In others, as reported to us from Louisiana for instance, public opinion seems to be against it. In many of the latter, however, the system of release on parole has been put into effect, as it has in Louisiana by Act of 1914, noted in the Committee's report for last year.

In the state of Florida, while there has been no legislation on the subject, the Board of Pardons has adopted the practice of recommending conditional pardons revocable for violation of the conditions. There is no statute specifically authorizing a conditional pardon, but the Supreme Court of the state has upheld the right of the Pardon Board under its constitutional authority to include in a pardon any condition that it may see fit. During the two years from April, 1913, to April, 1915, one hundred twenty-six conditional pardons were granted and

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<sup>1</sup>The membership of the committee is as follows: Edward Lindsey, Esq., chairman, Warren, Pa.; Edwin M. Abbott, Esq., Land Title Bldg., Philadelphia; Prof. Charles Richmond Henderson, University of Chicago, (deceased); Hon. Samuel W. Salus, Morris Bldg., Philadelphia; Rev. Samuel G. Smith, St. Paul, Minn., (deceased); Richard Sylvester, Former Chief of Police, Washington, D. C.; Frank L. Randall, Chairman State Board of Prisons, Boston, Mass.

only eight full pardons; in fact a full pardon, is now hardly ever granted except for the purpose of restoring citizenship to a prisoner who has been released under a conditional pardon long enough for the Board to be fully satisfied of his reformation.

In Vermont also the Executive, without statutory authority but upon his own initiative, has adopted the practice of granting conditional pardons. There is no indeterminate sentence or parole law but the system of suspended sentence and probation is in effect and an Act creating a state Probation Commission was passed in 1910. It has become the practice of the superintendents of the penal institutions to recommend to the Governor the release of all prisoners at the expiration of the minimum of their term of sentence provided they have observed the rules of the institution during such term and the Governor usually grants such prisoners a conditional pardon, requiring them to observe such conditions as he sees fit to impose until the expiration of the time covered by the maximum sentence. Among the conditions is usually the requirement that the prisoner released shall report at stated times to the probation officer of the county from which he was originally committed.

Rhode Island while not adopting the indeterminate sentence, by Act of March 31, 1915, created a Board of Parole and instituted the parole system in that state. The board consists of the Governor, the Agent of State Charities and Correction and three other citizens of the state to be appointed by the Governor with the advice and consent of the Senate. It is provided that whenever a person convicted of any offense shall be sentenced to be imprisoned in the state prison or shall be sentenced to be imprisoned in any county jail for a period of more than six months, such sentence shall be subject to the control of the board of parole. The board in any such case, unless the prisoner be confined as an habitual criminal or for life, may by an affirmative vote of the Governor and at least two other members of the board issue to such prisoner a permit to be at liberty upon parole whenever such prisoner has served not less than one-half of the term for which he was sentenced. In the case of a prisoner sentenced as an habitual criminal he must have served not less than five years and of a prisoner sentenced for life he must have served not less than twenty years to be eligible to parole. Every permit so issued by the board of parole entitles the prisoner to be at liberty upon parole during the remainder of the term, which he is under sentence to serve upon such terms and conditions, as the board may see fit in its discretion to prescribe. The board may by a majority vote of all of its members revoke any permit issued by it whenever it shall appear that such prisoner has violated

any of the terms or conditions of his permit or any of the laws of the state, in which event the prisoner shall be returned to the institution in which he was confined to serve therein the remainder of his original sentence according to the terms thereof and the time between the release of the prisoner upon parole and his return to the institution shall not be considered as any part of his original sentence.

In general it would appear that it is the feature of release upon parole or conditional liberation that has gained the adherence of public opinion and that the indeterminate sentence, where it has been adopted, has been so adopted on the basis of an adjunct to the parole system rather than as an end in itself. In fact the term "indeterminate sentence," is an inaccurate one as applied to any of the statutes which have been passed for none provided for a sentence that is strictly indeterminate, but only so within prescribed maxima and minima. In fact there are few, if any, practical advocates of a strictly indeterminate sentence. Any form of sentence, which provides a minimum and a maximum limit, is classed as an indeterminate sentence and this is all that is necessary in order to afford room for the working of a parole system; indeed that system may be and is applied to a strictly definite sentence under the pardoning power as is shown by the instance herein cited.

In Kentucky the indeterminate sentence law of 1910 was repealed and a new Act passed in 1914. This was primarily because it was held by the Kentucky Court of Appeals that under the Act of 1910 it was mandatory upon the Board of Prison Commissioners to issue a parole after service of the minimum term of sentence with nine months good prison record. The Act of 1914 gave to the Commissioners discretionary power to grant or refuse parole with the approval of the Governor and made other changes which may be noted by referring to the Appendix.

In Maryland the Parole Act of 1914 was noted in the Committee's report for last year. The General Assembly in 1914 also provided for submitting to the people a constitutional amendment authorizing legislation on the subject of indeterminate sentence, which will be voted upon at the November election of this year.

Montana has in 1915 provided an indeterminate sentence for any crime or offense punishable by imprisonment in the state prison, except treason, murder in the first degree, rape by force or administering poison to a human being with intent to kill. The Court in passing sentence must fix the minimum and maximum terms thereof, which must be within the minimum and maximum named in the law, prescribing punishment for the crime and in no case shall the minimum

be less than six months. Where the punishment is fixed by the jury the verdict must set forth the minimum and maximum. Any person receiving an indeterminate sentence may be paroled in the discretion of the Governor and State Board of Prison Commissioners after serve have an office at the state penitentiary, keep a register of all paroles and conditional pardons, have oversight over persons released on parole or conditional pardon and require all such persons to report to him at stated intervals. He shall also have power in accordance with the rules of the Parole Board to retake and return to the penitentiary all persons who have violated their parole or broken the conditions of their pardon. The indeterminate sentence system, as provided in 1911, continues in force unchanged in all other respects.

Detailed information is furnished in the Appendix as to the Kentucky, Ohio and Rhode Island Acts in the form of answers to questions uniform with similar information appended to the Committee's reports for previous years.

## APPENDIX

### QUESTIONS.

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole board.
4. Duties of parole board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

### ANSWERS.

*Kentucky* (Laws of 1914, ch. 19).

1. All persons guilty of felony or misdemeanor except such crimes as are punishable by death or life imprisonment.
2. Sentence fixed by the Jury within the minimum and maximum terms as provided by law for such offenses.
3. Three Commissioners appointed by the Governor for a period of four years.
4. Investigating and granting paroles with the approval of the Governor. Investigating and revoking paroles. General supervision of the Penal Institutions of the State.
5. Written statements of facts by trial officials and any and all petitions from home people. No paid attorneys permitted to appear.
6. All prisoners who have served minimum terms with at least nine months good prison record. Persons committed for life are allowed to file application after eight years.
7. Particulars of crime, past life of individual and prison record.

8. Respectable employment with a reputable firm for at least six months and continued conscientious effort to good citizenship. Monthly report as to conduct, employment, wages and general environment.
9. Failure on his part as a peaceful and law-abiding citizen or to report each 30 days as to conduct, employment, etc.
10. Warrant issued by the Board of Prison Commissioners and approved by the Governor to any Peace Officer in the State.
11. Returned to the Institution to serve unexpired portion of sentence
12. Pardon by Governor.
13. By Governor.
14. About 10 or 12 per cent.
15. State system.
16. 3,200.
17. The Act of 1910 was held by the Kentucky Court of Appeals to mean that after service of minimum term with nine months' good prison record that it was mandatory upon the Commissioners to issue parole. The Act of 1914 gave to the Commissioners discretionary power to reject applications and to grant paroles with approval of the Governor.

*Ohio* (Amendment of Sec. 2166 of the General Code of Feb. 26, 1913).

1. Any person who shall be convicted of a felony by due process of law. Except of crimes which are punishable by a life sentence.
2. Each felony has its prescribed penalty in years of imprisonment, such terms being defined in the Statutes, and names the minimum number of years which a convicted person must serve and the maximum number of years which he can be required to serve.
3. The Ohio Board of Administration, composed of four members.
4. To determine the sentence of any inmate, at its discretion, after the minimum term prescribed by law has been served.
5. Application for parole is made out by the prisoner himself, said application to be advertised for three successive weeks in two newspapers of opposite politics in the County from which applicant was committed. In application, references are given also detailed account of life for ten years before commitment. Each reference and employer is addressed by mail and answers are submitted to the Board with application and certified proof of publication of advertising.
6. All who have not previously been convicted of a felony, at expiration of minimum sentence.
7. Applicant's home training, habits before conviction, circumstances

surrounding crime, attitude toward society, conduct since incarceration and attitude as to future conduct if paroled.

8. Abstain from use of intoxicants, cigarettes, etc., care for those who are dependent upon him, be steadily employed, make monthly reports to the Record Clerk of the Institution, in which is stated where employed, nature of employment, amount earned, amount expended and for what. These reports must be countersigned by the employer or by some one designated by the officials of the institution.
9. Drinking, loafing and general lawlessness. Commission of another Crime, either misdemeanor or felony. Leaving State without permission. Continued failure to report. False or fictitious reports.
10. Declared violator by field officer or official, advertised and reward of \$25.00 offered.
11. Returned to penitentiary and given hearing by Board. If found that his violation has been gross or he is not worthy of further trial, can be held up to maximum term at the discretion of the Board.
12. Usually given a final release after showing good conduct and observing all rules of parole for one year, on recommendation of field officer or the warden to the Board.
13. In writing, by authority of the Board.
14. For the past two years less than 10 per cent of those paroled.
15. State system; before 1913 applied to state reformatory only.
16. During the past year over five hundred were placed on probation and paroled. On July 2, 1915, there were 503 persons on parole and probation.
17. When a parole is granted it is required that the paroled person have a signed employer's agreement before being released. This is an agreement to employ the one paroled, and assist him in every way consistent to keep the conditions of his parole, also to countersign his monthly reports.

Three field officers are employed whose duty it is to keep in close touch with those under his jurisdiction, report their conduct, verify their reports and assist them wherever assistance is required.

*Rhode Island* (Act of March 31, 1915).

1. No indeterminate sentence.
2. As usual under definite sentences.
3. Board consisting of the Governor, the agent of State Charities and Corrections, and three other citizens to be appointed by the Governor with the advice and consent of the Senate.



4. By affirmative vote of the Governor and at least two other members of the board to issue permits to be at liberty upon parole and to revoke such permit in case of violation of conditions of parole.
5. The parole board is not required to receive or consider any petition nor to give public or private hearings and it may secure the information, upon which it acts in such manner and by such means as it may consider most fitting to carry out the purpose of the Act, provided that before issuing a permit to a prisoner the attorney general must be given an opportunity to submit to the board such information as he may have relating to the character and history of the prisoner.
6. Any person imprisoned in the state prison and any person sentenced to imprisonment in a county jail for a period of more than six months, but in the case of one sentenced as a habitual criminal, he must have served not less than five years and in the case of one sentenced to imprisonment for life he must have served not less than twenty years to be eligible to parole.
7.
  - a. That such prisoner is deserving of such permit by reason of his good conduct while imprisoned and has shown a disposition to reform.
  - b. That such prisoner will be able to secure employment as soon as he is at liberty upon parole or is otherwise provided for so that he will not become dependent upon public charity.
8. Such as the board may prescribe.
9. Violation of any of the terms and conditions of his permit or any of the laws of the state.
10. Warrant of arrest issued by the Governor to any officer authorized to serve criminal process.
11. To serve the remainder of his original sentence, the time he is at liberty on parole being disregarded.
12. Expiration of sentence.
13. Automatically by expiration of term of sentence.
14. No information.
15. All prisoners in state prison and all sentenced to more than six months in county jail.
16. No information.
17. No information.